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2                   UNITED STATES DISTRICT COURT  
3                   WESTERN DISTRICT OF WASHINGTON  
4                   AT TACOMA

5 ERVIN BANKS,

6                   Plaintiff,

7 v.

8 KENT W. UNDERWOOD,

9                   Defendant.

10                   CASE NO. C13-5984 BHS

11                   ORDER ADOPTING REPORT  
12                   AND RECOMMENDATION

13                   This matter comes before the Court on the Report and Recommendation (“R&R”)  
14 of the Honorable Karen L. Strombom, United States Magistrate Judge. Dkt. 5. The Court  
15 having considered the R&R and the remaining record, and no objections having been  
16 filed, does hereby find and order as follows:

17                   (1)     The R&R is **ADOPTED**;

18                   (2)     This action is **DISMISSED without prejudice** prior to service for failure  
19 to state a claim; and

20                   (3)     Plaintiff’s application to proceed in forma pauperis is **DENIED**.

21                   Dated this 23rd day January, 2014.

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**BENJAMIN H. SETTLE**  
25                   United States District Judge